

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - -x  
:  
UNITED STATES OF AMERICA  
:  
- against -  
:  
HUI CHEN,  
:  
Defendant.  
:  
- - - - -x

CHIN, District Judge

The Court received three documents from the defendant. The first was a "Notice to the Court of Change of Counsel," dated May 6, 2008. The notice requested that the Court "appoint new counsel" because, as defendant explained, she was "requesting re-sentencing" based on "new and helpful information" that she intended to provide the government. The Court faxed a copy of the notice to both the government and defense counsel on May 15, 2008. The Court re-faxed a copy of the notice to the government on May 22, 2008.

The Court heard nothing more from the lawyers.

On May 21, 2008, the Court received another copy of the notice, slightly updated to reflect that it was defendant's second request.

On July 10, 2008, the Court received a hand written letter from the defendant, dated July 2, 2008, reiterating her request for new counsel. For the first time, defendant advised the Court of her desire to appeal. She attached a notice of appeal with a certificate of service by mail to the government, dated July 2, 2008. The Court will provide copies for counsel.

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 7/11/08

ORDER

S4 06 CR. 457 (DC)

The Court construes the July 2, 2008 letter as a motion for leave to appeal. The motion is denied as untimely. Pursuant to Fed. R. App. P. 4(b)(1)(A), a defendant's notice of appeal must be filed within ten business days of the entry of judgment. See Fed. R. App. P. 4(b)(1)(A), 26. Judgment was entered here on April 24, 2008. Pursuant to Fed. R. App. P. 4(b)(4), a district court may extend the time to file a notice of appeal "for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b)." Fed. R. App. P. 4(b)(4). That thirty-day period ended on June 9, 2008. Accordingly, the motion is untimely. United States v. Moreno-Rivera, 472 F.3d 49, 50 (2d Cir. 2006).

It is unclear whether defendant asked her lawyer, Roy Kulcsar, to file a notice of appeal. The Court will hold a conference on July 29, 2008, at 4:30 PM. The Government shall arrange for the defendant to be present, and Mr. Kulcsar will appear as well. We will discuss (1) defendant's request for new counsel, (2) her request to provide the Government with further information, (3) whether defendant and Mr. Kulcsar discussed the filing of a notice of appeal, (4) whether defendant asked Mr. Kulcsar to file a notice of appeal, and (5) whether, as no notice of appeal was filed in a timely manner, Mr. Kulcsar provided defendant with effective assistance of counsel. See Campusano v. United States, 442 F.3d 770 (2d Cir. 2006).

As for defendant's request for counsel, it is denied, at least for now, for defendant does not allege that she is

unable to afford an attorney and, indeed, she was represented by retained counsel throughout this case. Defendant has not even alleged that she qualifies for CJA counsel. Mr. Kulcsar remains counsel for now.

SO ORDERED.

Dated: New York, New York  
July 11, 2008



DENNY CHIN  
United States District Judge